

AGREEMENT
BETWEEN
THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA
AND
THE MINISTER OF DEFENSE
OF THE FRENCH REPUBLIC
FOR
TEST AND EVALUATION PROGRAM (TEP) COOPERATION
(SHORT TITLE: TEP AGREEMENT)

This is a true and complete copy of the original English version of the Agreement Between the Department of Defense of the United States of America and the Minister of Defense of the French Republic for Test and Evaluation Program (TEP) Cooperation, signed January 23, 2003.

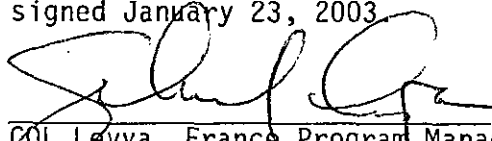
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TABLE OF CONTENTS

| | |
|--|----|
| PREAMBLE | 4 |
| ARTICLE I | |
| DEFINITIONS | 5 |
| ARTICLE II | |
| OBJECTIVES | 9 |
| ARTICLE III | |
| SCOPE OF WORK | 10 |
| ARTICLE IV | |
| MANAGEMENT (ORGANIZATION AND RESPONSIBILITY) | 13 |
| ARTICLE V | |
| FINANCIAL PROVISIONS | 16 |
| ARTICLE VI | |
| CONTRACTING PROVISIONS | 19 |
| ARTICLE VII | 21 |
| TEP EQUIPMENT TRANSFERS | 21 |
| ARTICLE VIII | |
| DISCLOSURE AND USE OF INFORMATION | 23 |
| ARTICLE IX | |
| CONTROLLED UNCLASSIFIED INFORMATION | 28 |
| ARTICLE X | |
| VISITS TO ESTABLISHMENTS | 29 |
| ARTICLE XI | |
| SECURITY | 30 |
| ARTICLE XII | |
| THIRD PARTY SALES AND TRANSFERS | 33 |
| ARTICLE XIII | |
| LIABILITY AND CLAIMS | 34 |
| ARTICLE XIV | |
| CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES | 35 |
| ARTICLE XV | |
| SETTLEMENT OF DISPUTES | 36 |
| ARTICLE XVI | |
| LANGUAGE | 37 |
| GENERAL PROVISIONS | 38 |
| ARTICLE XVII | |
| AMENDMENT, TERMINATION, ENTRY INTO FORCE, AND DURATION | 39 |
| ANNEX A | |
| MODEL RECIPROCAL USE OF TEST FACILITIES (RUTF) | 1 |
| PROJECT AGREEMENT (PA) | 1 |
| BETWEEN | 1 |
| APPENDIX 1 – COST ESTIMATE MODEL | 10 |
| APPENDIX 2 – INVENTORY OF TEP EQUIPMENT TRANSFERS | 11 |
| ANNEX B | |
| MODEL COOPERATIVE TEST & EVALUATION (CTE) | 1 |
| PROJECT AGREEMENT (PA) | 1 |
| CTE PROJECT AGREEMENT NO (XXXX) | 1 |
| APPENDIX 1 – COOPERATIVE PROJECT PERSONNEL | 11 |
| APPENDIX 2 – INVENTORY OF TEP EQUIPMENT TRANSFERS | 15 |

ANNEX C

MODEL TEP EQUIPMENT TRANSFER (ET) FORM..... 1

PREAMBLE

The Department of Defense of the United States of America (U.S. DoD) and the Minister of Defense of the French Republic (FR MOD), hereinafter referred to as the "Parties":

Recognizing the Agreement between the Parties to the North Atlantic Treaty Regarding the Status of their Forces, signed in London on June 19th, 1951 (NATO SOFA);

Recognizing the Agreement Approving the Procedures for Reciprocal Filing of Classified Patent Applications in the United States of America and France of July 10th 1959;

Recognizing the NATO Agreement on the Communication of Technical Information for Defense Purposes of 19th October 1970 and its Implementing Procedures of 1st January 1971;

Recognizing the General Security of Information Agreement between the Government of the United States of America and the Republic of France of 7th September 1977;

Recognizing the Memorandum of Understanding between the Government of the United States of America and the Government of the French Republic Concerning the Principles Governing Reciprocal Purchases of Defense Equipment of May 22, 1978, as amended;

Recognizing the Industrial Security Procedures between the Secretary of Defense of the United States and the French Minister of Defense of 21st May 1985;

Recognizing the Agreement between the Secretary of Defense of the Government of the United States of America and the Minister of Defense of the Government of the Republic of France regarding the Exchange of Scientists and Engineers of January 28, 1994;

Having a common interest in defense;

Recognizing the benefits to be obtained from standardization, rationalization, and interoperability of military equipments;

Desiring to improve their mutual conventional defense capabilities through the application of emerging technology;

Having a mutual need to engage in a broad range of cooperative or reciprocal Test and Evaluation (T&E) Activities to satisfy common operational requirements;

Having independently conducted testing of the applications of various technologies, and having recognized the benefits of cooperation in the T&E arena;

Have agreed as follows:

ARTICLE I

DEFINITIONS

The Parties have jointly decided upon the following definitions for terms used in this Agreement:

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| Background Information | Information not generated in the performance of a TEP Activity. |
| Classified Information | <i>Official information that requires protection in the interests of national security and is so designated by the application of a security classification marking. This information may be in oral, visual, magnetic or documentary form or in the form of equipment or technology.</i> |
| Computer Data Base | A collection of data recorded in a form capable of being processed by a computer. This definition does not include Computer Software. |
| Computer Program | A set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations. |
| Computer Software | Computer Programs, source code, source code listings, design details, algorithms, processes, flow charts, formulas, and related materials that would enable the software to be reproduced, recreated, or recompiled. Computer Software does not include Computer Data Bases or Computer Software Documentation. |
| Computer Software Documentation | Owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the Computer Software or provide instructions for using the Computer Software. |
| Contract | Any mutually binding legal relationship under national laws which obligates a Contractor to furnish supplies or services, and obligates one or both of the Parties to pay for them. |
| Contracting | The obtaining of supplies or services by Contract from sources outside the government organizations of the Parties. Contracting includes description (but not determination) of supplies and services required, solicitation and selection of sources, preparation and award of Contracts, and all phases of Contract administration. |
| Contracting Agency | The entity within the government organization of a Party, which has authority to enter into, administer, or terminate Contracts. |

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| Contracting Officer | A person representing a Contracting Agency of a Party who has the authority to enter into, administer, or terminate Contracts. |
| Contractor | Any entity awarded a Contract by a Party's Contracting Agency. |
| Controlled Unclassified Information | Unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. Whether the information is provided or generated under this Agreement, the information shall be marked to identify its "in confidence" nature. It could include information which has been declassified, but remains controlled. |
| Cooperative Project Personnel (CPP) | Military members or civilian employees of a Party assigned under a specific Project Agreement (PA) who perform managerial, engineering, technical, administrative, Contracting, logistics, financial, planning or other functions in furtherance of the Project. |
| Cooperative Test & Evaluation (CTE) Project Agreement (PA) | An implementing agreement, under this Agreement which specifies the provisions for cooperation on a specific TEP Activity. |
| Defense Purposes | Manufacture or other use in any part of the world by or for the armed forces of either Party. |
| Designated Security Authority (DSA) | The security office approved by national authorities to be responsible for the security aspects of this Agreement. |
| Direct Cost | Any item of cost that is easily and readily identified to a specific unit of work or output within the Test Facility where the use occurred, that would not have been incurred if such use had not occurred; it may include costs of labor, materials, facilities, utilities, equipment, supplies, as well as any transportation costs connected with a RUTF PA. Direct cost may also include any other resources of the Test Facility that are consumed or damaged in connection with the use or the maintenance of the Test Facility for the purposes of the use. |
| Financial Costs | Any project costs that, due to their nature, shall be paid using monetary contributions from the Parties. |
| Foreground Information | Information generated in the performance of a TEP Activity. |
| Host Party | The Party in whose territory the T&E Activity occurs. |
| Indirect Cost | Any item of cost that is not easily and readily identified to a specific unit of work or output within the Test Facility where the |

use occurred; may include general and administrative expenses for such activities as supporting base operations, manufacturing, amortization of capital equipment, supervision, procurement of office supplies, and utilities that are accumulated costs allocated among several users.

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| Information | Any information provided to, generated in, or used in a TEP Activity under this Agreement regardless of form or type (including science and technology projected-developed Computer Data Bases, Computer Software, and Computer Software Documentation). |
| Invention | Any invention or discovery formulated or made in the course of work performed for a TEP Activity. |
| Jointly Generated Foreground Information | Information jointly generated by the Parties in the performance of a TEP Activity. |
| Non-financial Costs | Any project costs that, due to their nature, shall be met using non-monetary contributions from the Parties. |
| Parent Party | The U.S. DoD and the FR MOD departments or agencies to which Cooperative Project Personnel belong. |
| Patent | Legal protection of the rights to exclude others from making, using or selling an invention. The term refers to any and all patents as defined by national laws and regulations. |
| Project Agreement (PA) | An implementing agreement under this Agreement which can be either a Reciprocal Use of Test Facilities (RUTF) PA or a Cooperative Test & Evaluation (CTE) PA. |
| Reciprocal Use of Test Facilities (RUTF) PA | An implementing agreement under this Agreement that specifies the cost, schedule and performance aspects of a test effort conducted by the performing Party's test facility for the customer Party. |
| TEP | Test & Evaluation Programs. |
| TEP Activity | Any activity in support of information exchange, Working Groups, Project Agreements and TEP Equipment transfers, as specified in Article III, (Scope of Work) of this Agreement. |
| TEP Equipment | Any test articles, material, equipment, end item, subsystem, component, special tooling or test equipment, irrespective of ownership, to be used and transferred in a TEP Activity. |

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| Test and Evaluation (T&E) | The overall process of data taking, data reduction and the analysis of that data for a specific purpose or application. |
| Test Facility | Range or other facility at which testing of defense equipment may be accomplished. |
| Third Party | A government other than the government of a Party and any person or other entity whose government is not the government of a Party. |
| Working Group | Any group authorized to conduct TEP-related T&E activities by the Management Agents (MAs), in accordance with Article III, (Scope of Work) and Article IV, (Management). |

ARTICLE II

OBJECTIVES

2.1 This Agreement establishes a comprehensive framework for implementing a program of cooperation on mutually determined topics related to defense Test & Evaluation (T&E). Specific objectives of this Agreement are:

- 2.1.1 to maximize the effective utilization of each Participant's Test Facilities;
- 2.1.2 to share test resources through reciprocal use of Test Facilities and other test capabilities and testing tools;
- 2.1.3 to conduct joint T&E-related tests and experiments to advance test technologies and procedures;
- 2.1.4 to conduct cooperative development of test capabilities, test procedures and methods, and test standards and criteria;
- 2.1.5 to exchange testing-related information such as test capability specifications, test criteria, standards, procedures, lessons learned, and certain test data; and
- 2.1.6 to provide for the transfer of test technologies and procedures.

2.2 The Parties intend to use their best efforts to accommodate testing requirements of the other Party. However, each Party has the right to refuse to conduct a proposed Test & Evaluation Program (TEP) Activity in its country if, for example, it determines that the proposed Activity:

- 2.2.1 does not fall within its national security interests;
- 2.2.2 is not permitted by international treaties or protocols to which either Party's government is a party;
- 2.2.3 cannot be accommodated within the test program resources of the performing Party;
- 2.2.4 cannot be conducted within constraints set by any national, state or local environmental laws or ordinances; or
- 2.2.5 would pose an unacceptable risk to life or property.

ARTICLE III

SCOPE OF WORK

3.1 The scope of work for this Agreement shall include the following TEP Activities:

3.1.1 *Performance of testing requirements on a fee-for-service basis under the provisions of reciprocal use of Test Facilities. This may include access to, or transfer of, test instrumentation and other testing tools. This may also include the conduct of joint tests where both Parties have an interest;*

3.1.2 conduct of collaborative T&E on systems of shared interest;

3.1.3 conduct of joint tests and experiments to advance the state of the art of test technology;

3.1.4 cooperative development of new or existing test instrumentation, equipment, facilities, and other testing tools;

3.1.5 cooperative development of testing criteria, standards and procedures;

3.1.6 *exchange of information on testing criteria, standards and procedures and other test-related or test-derived information;*

3.1.7 transfer of test technologies and procedures;

3.1.8 familiarization with each other's facilities and identification of potential cooperative test and evaluation opportunities;

3.1.9 conduct of T&E personnel exchange through this Agreement and the Agreement between the Secretary of Defense of the Government of the United States of America and the Minister of Defense of the Government of the Republic of France regarding the Exchange of Scientists and Engineers of January 28, 1994.

3.2 The following mechanisms shall be utilized to undertake the TEP Activities described in paragraph 3.1:

3.2.1 Information Exchange:

3.2.1.1 Information exchange shall take place on an equitable basis in all areas concerning TEP. This includes all aspects of T&E policy, doctrine, and operational requirements related to TEP. This Agreement permits the exchange of Information for any purpose under the scope of this Agreement, including harmonizing the Parties' respective TEP requirements, and for formulating,

developing, and negotiating any TEP Activity. Information exchange need not necessarily coincide in time, technical field, or in the form of information.

3.2.2 Working Groups (WGs):

3.2.2.1 WGs may be established to explore, study and report on specific T&E issues. A WG shall be limited in scope to a single, well-defined area and shall endeavor to assess the T&E issue based on information provided by both Parties in such a way as to arrive at a jointly determined position within a set time limit. All WGs shall have their own written terms of reference (TORs).

3.2.3 TEP Project Agreements (PAs):

3.2.3.1 Reciprocal Use of Test Facilities (RUTF) PA: This type of PA shall include specific provisions, consistent with this Agreement and the model at Annex A, that specify the performing and customer Parties' responsibilities concerning the objectives, scope of work, estimated test schedule, management structure, financial provisions, TEP Equipment transfers (if required), special disclosure and use of information provisions (optional) and security classification for the PA.

3.2.3.2 Cooperative T&E (CTE) PA: This type of PA shall include specific provisions, consistent with this Agreement and the model at Annex B, concerning the objectives, scope of work, sharing of work, management structure, financial provisions (if required), contractual provisions (if required), TEP Equipment transfers (if required), special disclosure, and use of information provisions (optional) and security classification for the applicable PA.

3.2.3.3 The Parties recognize that there may be instances where a project contains elements including cooperative effort as well as the reciprocal use of Test Facilities. Such projects shall be treated as cooperative projects. Equitability shall be required in all such projects with an appropriate balance between payments obtained for the use of Test Facilities and rights to use the results of the project.

3.2.4 TEP Equipment Transfer:

3.2.4.1 As required and consistent with the model at Annex C, TEP Equipment Transfers may be concluded for TEP Activities.

3.2.5 Familiarization Visits:

3.2.5.1 Familiarization visits may occur, in accordance with Article X (Visits to Establishments), to promote awareness of each other's facilities and to identify potential cooperative T&E opportunities.

3.3 Acquisition or production programs, which may evolve from cooperation under one or more PAs under this Agreement, are outside the scope of this Agreement and require conclusion of separate agreements.

ARTICLE IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1 The Director, Operational Test & Evaluation (DOT&E), Office of the Secretary of Defense (or his/her successor in the event of reorganization) is designated U.S. Agreement Director (U.S. AD). The Director, Test and Evaluation Systems (or his/her successor in the event of reorganization) is designated the French Agreement Director (FR AD). The ADs shall be responsible for:

- 4.1.1 monitoring implementation of this Agreement and exercising executive-level oversight;
- 4.1.2 monitoring the overall use and effectiveness of the Agreement;
- 4.1.3 recommending PAs to the Parties;
- 4.1.4 recommending amendments to the Agreement and its PAs to the Parties;
- 4.1.5 resolving issues brought forth by the Management Agents;
- 4.1.6 approving PAs pursuant to paragraph 3.2.3 and the Parties' respective national procedures.

4.2 The Deputy Director, Resources and Ranges (DOT&E) (or his/her successor in the event of reorganization or his/her designee), is designated U.S. Management Agent (U.S. MA) for the Agreement. The Deputy Director for Cooperation and Business Development, Test & Evaluation Directorate (or his/her successor in the event of reorganization or his/her designee), is designated French Management Agent (FR MA). The MAs shall be responsible for:

- 4.2.1 monitoring and evaluating the work conducted under each TEP Activity and providing guidance and direction as necessary;
- 4.2.2 designating points of contact (POCs) and exercising overall supervision for information exchanges pursuant to paragraph 3.2.1;
- 4.2.3 approving the formation of Working Groups and their TORs pursuant to paragraph 3.2.2;
- 4.2.4 granting approval-in-principle (AIP) for RUTF PAs;
- 4.2.5 developing PAs pursuant to paragraph 3.2.3, and exercising overall supervision over the PAs' Steering Committee (SC) members, if an SC is established, or the PAs' Project Officers (POs) (if no SC is established);

- 4.2.6 obtaining DSA approval for Project Security Instructions and Classification Guides for CTE PAs that contain provisions for the generation or exchange of Classified Information;
 - 4.2.7 developing TEP Equipment transfers pursuant to paragraph 3.2.4;
 - 4.2.8 approving familiarization visits pursuant to paragraph 3.2.5;
 - 4.2.9 monitoring Third Party Sales and Transfers authorized in accordance with Article XII (Third Party Sales and Transfers);
 - 4.2.10 forwarding, when necessary, issues to the ADs for resolution.
- 4.3 Each WG established by the MAs under this Agreement and within the provisions of the written TOR for the WG, shall be responsible for:
- 4.3.1 submitting a proposed TOR to the MAs for approval;
 - 4.3.2 conducting their assigned tasks and providing periodic progress reports to the MAs, including requesting further guidance as necessary;
 - 4.3.3 submitting final reports to the MAs for submission to the TEP ADs.
- 4.4 If an SC is established under a particular PA, it shall be responsible for:
- 4.4.1 providing policy and management direction to the POs during PA execution;
 - 4.4.2 monitoring overall implementation, including technical, cost, and schedule performance against requirements;
 - 4.4.3 approving plans for transfers of TEP Equipment or disposal of jointly acquired TEP Equipment, in accordance with Article VII;
 - 4.4.4 resolving issues brought forth by the POs;
 - 4.4.5 maintaining oversight of the security aspects of a project, including preparing a Project Security Instruction and a Classification Guide in the event that a CTE PA contains provisions for the generation or exchange of Classified Information;
 - 4.4.6 approving assignment of personnel working on a project at the other Party's facilities in accordance with the provisions set out in Appendix 1 to Annex B;
 - 4.4.7 establishing the detailed financial procedures of a CTE PA through a Financial Management Procedures Document (FMPD) in the event that one Party contracts on behalf of the other Party or on behalf of both Parties;

4.4.8 reporting status and activity of assigned PAs on an annual basis to the MAs.

4.5 In accordance with the terms of any PA, the POs shall have primary responsibility for effective implementation, efficient management and direction of their assigned PA including technical, cost, and schedule performance against requirements. Additionally, the POs shall have the responsibilities under paragraph 4.4 if no SC is established for their CTE PA, except that the MA shall be responsible for resolving issues brought forth by the POs. The POs shall also maintain a list of all TEP Equipment transferred by either of the Parties under a PA.

4.6 In accordance with the terms of an approved CTE PA, with the provisions set out in Appendix 1 to Annex B of this Agreement attached to the approved CTE PA, a Party may assign Cooperative Project Personnel (CPP) to the joint project office (JPO) or the other Party's facilities to assist in the implementation of an approved PA.

4.7 Special Procedures for RUTF PAs. The following special procedures shall apply to RUTF PAs:

4.7.1 The Parties' representatives will engage in technical discussions concerning proposed RUTF PA efforts in order to formulate draft project proposals.

4.7.2 The customer Party's MA shall submit the official project proposal to the performing Party's MA. The project proposal shall briefly describe the test effort requested.

4.7.3 The performing Party shall review the project proposal to determine if it is able and willing to provide the requested test effort.

4.7.4 If the performing Party's MA determines that the requested test effort is feasible he/she will notify the customer Party's MA of approval-in-principle (AIP). AIP does not constitute a commitment to perform the test effort, but allows the Parties to proceed with the establishment of the RUTF PA. If AIP will not be granted, the performing Party's MA will notify, with explanation, the customer Party's MA as soon as practicable.

4.7.5 Project proposals and AIPs shall normally revolve around an annual 30-month forecast, but out-of-cycle project proposals may be accepted and similarly processed.

4.8 The ADs shall meet every two years, or as required, alternately in the United States and France. The MAs, SCs and/or POs shall meet as required, alternately in the United States and France. The Chairperson for each meeting shall be the senior official of the Host Party. During such meetings, all decisions shall be made unanimously with each Party having one vote. In the event that the Parties are unable to reach a timely decision on an issue, each Party shall refer the issue to its higher authority for resolution. In the meantime, approved PAs shall continue to be implemented without interruption under the direction of the SC and/or POs while the issue is being resolved by higher authority.

ARTICLE V

FINANCIAL PROVISIONS

5.1 This Agreement creates no financial commitments regarding individual RUTF or CTE PAs. Detailed descriptions of the financial provisions for a specific project, including the total cost of the project and each Party's cost share, shall be contained in the specific RUTF or CTE PA.

5.2 For RUTF PAs, charges between Parties shall be agreed on a case-by-case basis and specified in the PA. These charges shall consist of Direct Costs and applicable Indirect Costs. Direct Costs shall not be greater than what one component of the performing Party would charge to another component of the performing Party for the type and scope of the services provided, except for the cost of the military personnel directly involved in the RUTF Activity chargeable to the customer Party. If required, Indirect Costs may also be charged depending on the nature and specifics of the effort. To the maximum extent possible, Indirect Costs charged to the customer Party shall be minimized.

5.3 For CTE PAs, each Party shall contribute its equitable share of the full Financial and Non-Financial Costs, including overhead costs, administrative costs and cost of claims, and shall receive an equitable share of the results of each CTE PA.

5.4 The financial and non-financial provisions for a CTE PA, including the total cost of the CTE PA and each Party's share of the total cost, shall be included in the CTE PA.

5.5 For each CTE PA, the POs shall be responsible for establishing the detailed financial management procedures under which the project shall operate. Where necessary, these procedures shall be detailed in an FMPD proposed by the POs and subject to the approval of the MAs, or SC, if one is established.

5.6 Each Party shall perform, or shall have performed its tasks and shall use its best efforts to perform the tasks within the cost estimates specified in each PA. Each Party shall bear the full costs it incurs for performing, managing, and administering its own activities under this Agreement and participation in each PA, including its share of the costs of any Contracts under paragraph 5.13.

5.7 The following costs shall be borne entirely by the Party incurring the costs or on whose behalf the costs are incurred:

5.7.1 costs associated with any unique national requirements identified by a Party;

5.7.2 any other costs not expressly stated as shared costs or any other costs outside the scope of this Agreement and its PAs.

5.8 For CTE PAs with shared costs that involve the establishment of a JPO with CPP

assignments to the other Party's facilities or the JPO, the CTE PA shall address the financial and non-financial contributions required for JPO administration and associated support services including, but not limited to, JPO costs of travel incurred in support of project efforts, JPO training costs, Contract award, Contract administration, office space, security services, information technology services, communications services, and supplies.

5.9 In addition to the shared costs of JPO administration and associated support services costs described in paragraph 5.8, the cost of CPP in the JPO or assigned to the other Party's facilities shall be borne as follows:

5.9.1 The Host Party shall bear the costs of all pay and allowances of Host Party personnel in the JPO;

5.9.2 The Parent Party shall bear the following CPP-related costs:

5.9.2.1 all pay and allowances,

5.9.2.2 transportation of the CPP, the CPP's dependents, and their personal property to the place of assignment in the Host Party's nation prior to the CPP's commencement of a tour of duty in the JPO or field activity, and return transportation of the foregoing from the place of assignment in the Host Party's nation upon completion or termination of the tour of duty.

5.9.2.3 compensation for loss of, or damage to, the personal property of CPP or the CPP's dependents, subject to the Parent Party's laws and regulations.

5.9.2.4 preparation and shipment of remains and funeral expenses in the event of the death of the CPP or the CPP's dependents.

5.10 For CTE PAs without shared costs that involve the assignment of one Party's CPP to the facilities of the other Party, the Parties shall bear the costs as set forth in 5.7. The Host Party shall also bear the assignment-related administrative and support costs such as CPP costs of travel incurred in support of a CTE PA, CPP-related training, office space, security services, information technology services, communications services, and supplies.

5.11 For TEP Equipment transfers in which operator personnel from the providing Party are required, the responsibility for bearing all costs associated with such personnel, including, but not limited to, salaries, overhead, transportation, and subsistence, shall be specified in the ET Form.

5.12 A Party shall promptly notify the other Party if available funds shall not be adequate to fulfill its obligations as agreed under any PA, or if it appears that the cost estimates in a PA shall be exceeded. The Parties shall immediately consult with a view toward continuation on a modified basis.

5.13 For CTE PAs, if one Party contracts on behalf of the other Party or on behalf of both Parties, each Party shall make funds available in the amounts and at the times set forth in the estimated schedule for monetary contributions, as specified in the FMPD.

5.14 For CTE PAs, the Parties recognize that, in performing Contracting responsibilities on behalf of the other Party, it may become necessary for the Contracting Party to incur contractual or other obligations for the benefit of the other Party prior to the receipt of the other Party's funds. In such event, the other Party shall make such funds available in such amounts and at such times as required by the Contract or other obligation and shall pay any damages and costs that may accrue from the performance or cancellation of the Contract or other obligation in advance of the time such payments, damages, or costs are due.

5.15 Each Party shall be responsible for the audit of its activities or its Contractors' activities pursuant to a PA. A Party's audits shall be in accordance with its own national practices. For CTE PA efforts where funds are transferred between the Parties, the receiving Party shall be responsible for the internal audit regarding administration of the other Party's funds in accordance with the receiving Party's national practices. Audit reports of such funds shall be promptly made available by the receiving Party to the other Party.